COMMENTS OF THE CITY OF AUSTIN, TEXAS

WT DOCKET No. 19-250
WC Docket No. 17-84
RM-11849

Submitted October 29, 2019

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INTRODUCTION

The City of Austin strongly opposes the wireless industry's overreaching and unwarranted requests to further preempt local authority in this proceeding and urges the Commission to reject such requests. The Commission has already imposed considerable restrictions on local government's ability to manage public rights-of-way in a manner that safely accommodates all users and best addresses a wide array of public interests. Further preemption of local authority as requested by the petitioners in this proceeding will almost significantly erode local authority to manage public rights-of-way, rendering them moot and creating a lawless atmosphere where the deployment of wireless communications equipment overrides the needs of other users of public rights-of-way and all other public interests in the public space.

Austin is eager for the deployment of the most advanced communications infrastructure. The City is especially eager for the deployment of DAS and other microcell infrastructure, which hold great promise to expand broadband to all people and households and will likely serve as the backbone of the "Internet of things." At every stage of the development of new communications technology and of wireless communications technology, the City has worked closely and in good faith with providers to accommodate infrastructure deployment in a manner that benefits all users and meets the diverse needs and goals of the community. The City fears that good faith is not being shared by industry or the Commission on this particular topic. Both the Commission and industry are not treating local governments as partners that have a legitimate interest - indeed a sworn responsibility – to ensure the deployment of new infrastructure on public rights-of-way is deployed safely and in a manner that reflects the needs of all rights-of-way users and the broad interests of the community.

The City is compelled to express to the Commission the City's confidence that Austin's elected officials, staff, residents, and business owners have more knowledge of Austin, its needs, and the wishes of the community than the Commission or industry. Simply put, local right-of-way management does not discourage wireless deployment. Instead, it serves numerous public interests and public policy goals and ensures that rights-of-ways are managed in a manner that allows for all users to safely and efficiently use public rights-of-way. The City opposes the industry's request for a federal one-size-fits all preemption of local siting authority, and asks the

Commission to consider carefully the many differences between communities that necessitate local decisions: variation in state statutes, geographic challenges, climate variations, size, budgetary and staff resources, aesthetic character, the type and amount of existing infrastructure, and more. The City urges the Commission to reject industry requests in this proceeding. It is imperative to avoid placing further restrictions on cities as they currently collaborate with industry to deploy infrastructure in a manner that preserves and protects the finite rights of way belonging to their residents, safely accommodates all users, and best addresses a wide array of public interests.

RESPONSE TO SPECIFIC INDUSTRY REQEUSTS

In their petitions, the CTIA and the Wireless Infrastructure Association (WIA) ask the Commission to expand preemption of local government authority in Commission rules implementing Sections 6409 (47 USC 1455) and 224 (47 USC 224). The City offers the following responses to each specific industry request.

Section 6409 Rules

Please clarify that the term 'concealment element' in its rules applies only to a stealth facility or design element, such as an artificial tree limb or screen. In addition, please clarify that concealment requirements may not be used to disqualify an application as an eligible facilities request (EFR).

A considerable portion of next generation wireless infrastructure will be deployed in public rights-of-way immediately in front of and adjacent to residential and commercial properties. Limiting concealment to stealth facilities and design elements amounts to a blanket preemption of community design standards and disregards the rights of adjacent property owners.

Industry requests that fail to meet concealment requirements not be allowed to disqualify an application for an EFR will render those requirements moot. The City struggles to think of any

other applicant for a City permit being given such leeway to ignore basic rules that apply to all other property owners and rights-of-way users.

In addition, Austin has made significant investments in its public rights-of-way to enhance our community and promote economic and community development, including placing utilities underground in the central business district and in many of the City's historic neighborhoods. The ongoing Great Streets Development Program in our central business district enhances downtown streets and sidewalks to transform the public rights-of-ways into great public spaces and into walkable and accessible spaces through partnering with the development community on streetscape standards and sharing the cost of implementing enhancements.

The Commission should give all due respect to these community standards, economic and community development goals, and City investments and reject this request.

Please clarify that the term 'equipment cabinet' means cabinets that are placed on the ground or elsewhere on the premises, and does not include equipment attached to the structure itself, which is covered by other parts of the rule.

The City agrees that an equipment cabinet should not include antennas, electrical or transport facilities points of demarcation.

Please clarify that the entire structure or building is the 'base station' being modified, and thus that the size of the structure determines if a modification qualifies as an EFR.

The proposed redefinition of 'base station' is extreme and runs counter to several compelling public interests. The Commission opens the door to adverse public impacts by defining the entirety of any building hosting an antenna or equipment as a 'base station'. For example, an antenna and an equipment box located on the back of a historic building in a historic district is a much different proposition than the same infrastructure located on the front of the same building. The City would have a compelling public interest to deny the addition of such equipment to the front of the building and to require that the colocation take place in the back

of the building or to impose a different aesthetic and concealment standards to facilities on the front of a historic building in a historic district than to the back of the same building.

Please clarify that if a siting authority fails to timely act on an application for an EFR under 6409(a), and the application is thus deemed granted, applicants may lawfully construct even if the locality has not issued related permits.

The City is certain that applicants and builders of all types would support federal action allowing them to proceed with construction absent the issuance of local permits. The City is equally certain that victims suffering injury or death resulting from unpermitted, shoddy construction would not take as sanguine a view of such federal preemption of local authority. The two industry petitions illustrate the industry's shocking hubris, pointing to requirements for building or highway construction permits – something most construction contractors or even a homeowner building a backyard deck view as routine – as an example of how unfairly they are treated by local governments. Clearly, the industry views itself as worthy of special treatment – paying fair share for the use of public property and getting permits are for lesser industries that do not benefit from an indulgent federal regulatory body willing to preempt local government and all other public interests on their behalf.

The City views this proposal, combined with industry 'deemed granted' requests, as an industry attempt to circumvent "generally applicable building, structural, electrical, and safety codes and other laws codifying objective standards reasonably related to health and safety." Does the Commission expect a City to allow construction of a facility that has failed to meet basic building standards or that will block the views of motorist, bicyclists, or pedestrians, causing crashes, because an arbitrary permitting deadline imposed by the Commission has come and gone? The City notes industry use of term 'emboldened' in this portion of their petition to describe local governments acting to enforce basic building codes. If any entity in this proceeding is emboldened, it is industry, which is essentially seeking blanket preemption of local building codes.

Amend rules to reflect that collocations requiring an expansion of the current site—within 30 feet of a tower site—qualify for relief under Section 6409(a).”

The average width of a public right-of-way in the City of Austin is half the network are residential streets (avg ROW width ~ 55 ft) and half are downtown, collectors, arterials, etc. (avg ROW width ~ 80 ft).

Per this proposal, too much of Austin’s public rights-of-way would be “colocation sites” open to carte blanche placement of wireless communications infrastructure under the excessive preemption regime of Section 6409, rendering public ownership of public rights-of-way moot (though of course the City, not the Commission or the industry, would still bear the cost of maintaining and managing its public rights-of-way).

WIA’s request that wireless providers have the unfettered right to expand their deployments thirty feet outside the previously-approved site should be rejected. An additional thirty feet beyond the original reviewed and approved site could have unpredictable and irrevocable consequences. Modifications could violate setbacks and other zoning restrictions that were not implicated in the original site, resulting in backup generators in residential backyards or dangerously close to waterways. By any reasonable standard, such modifications are considered “substantial”.

Require that fees associated with eligible facilities requests under Section 6409 be cost-based

The City opposes this expansion of the small cell rule to cover Section 6409 colocations. The fees in the small cell rule are inaccurate and below a cost-based fee structure.

Clarify that Section 6409(a) and related rules apply to all state and local authorizations.

The City opposes any “one-size-fits-all” national standards overriding all state and local authorizations. Section 6409 applies to siting and zoning and the Commission should not expand its short clock or deemed granted provisions to include building and safety codes and standards.

Establish a milestone when the time to decide an application begins to run.

Industry is asking that the "shot clock" for colocation approval start when an applicant makes a "good faith" effort to submit its paperwork to a local government. The City is not clear as to what constitutes a "good faith" effort. Either an applicant has submitted required paperwork for a colocation permit or they have not. The City's permitting offices operate at widely advertised and well known hours and also offer online options for submitting permit applications. The 6409 shot clock already constrains the City's ability to evaluate colocation applications and this industry attempt to shave a few days off an already accelerated process is excessive. If the Commission adopts this proposal, the City foresees instances of applicants making a "good faith" effort to deliver paperwork 30 minutes after a permitting office has closed on a Friday evening before a long weekend and then arguing that the 6409 shot clock started that day.

Clarify what constitutes a substantial change under Section 6409(a)

The FCC's definition in the substantial size of the tower is clear and long-standing and should not be changed. WIA's request that wireless providers have the unfettered right to expand their deployments thirty feet outside the previously-approved site should be rejected. This would have far-reaching consequences that would undoubtedly be "substantial" under any definition of the word.

Declare that "conditional" approvals by localities violate Section 6409(a)

Petitioner arguments in this request are yet another instance of industry not wanting to comply with rules that apply to everybody else. Much of what the industry argues are unreasonable conditions in their petition – establishing a maintenance schedule, meeting community design standards, and installing lighting for safety purposes – will strike neighboring property owners and other right-of-way users as eminently reasonable.

Prohibit any local process or conditions that effectively defeat or reduce the protections afforded under Section 6409(a).

This request is another industry attempt to create a loophole to give it carte blanche to do as it sees fit in public rights-of-way with very limited local regulation or effort to meet widely applied safety and community standards.